In the High Court of Uttaranchal, at Nainital.

Writ Petition No. 329 of 2004 (S/B)

1- State of Uttaranchal through Principal Secretary, Home Department, Govt. of Uttaranchal, Dehradun.

2- Director General of Police, Dehradun

3- Deputy Inspector General of Police, Garhwal Range, Pauri.

4- Superintendent of Police, Pauri Garhwal .. Petitioners.

Versus

1- Jamshed Ali S/o Akthar Ali, R/o Village Tajpura, Thana Behat, Post Office Rirhi, District Saharanpur.

2- State Public Service Tribunal Dehradun ….Respondents.

Sri K.P. Upadhyaya, learned S.C. for the petitioners.
Sri Manoj Tiwari, learned counsel for respondent No. 1.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 30-03-2006

By way of this writ petition, the State of Uttaranchal has challenged the judgment and order dated 27-7-2004 (Annexure No. 1 to the writ petition) and sought for a writ in the nature of certiorari quashing the impugned judgment and order.

2- Brief facts of the case are that the respondent No.1 Jamshed Ali (hereinafter called 'respondent No.1') was appointed as Constable in Civil Police. When the respondent No.1 was posted as constable in Police Line, Pauri Garhwal, he got an information on 22-9-1997 with regard to the illness of his child and he proceeded on three days leave. As the condition of the child did not permit the respondent No.1 to resume his duties, hence he sent an application on 24-9-1997 through his relative who personally appeared before the Superintendent of Police, Pauri Garhwal and handed over the

application for three weeks leave. In the meantime the respondent No. 1 himself fell ill, hence he again moved an application on 17-10-1997 for sanction of further three weeks leave. As the condition of respondent No. 1 did not improve and he had to remain on medical leave for one month, therefore again an application for leave was sent on 17-10-1997 through special messenger. The respondent No. 1 after having been declared medically fit, reported on duty on 23-11-1997, in the Police Line, Pauri Garhwal.

4- A charge sheet was issued upon the respondent No.1 and he was required to submit his explanation. The respondent No.1 sought time for submitting the explanation to the charge sheet. However, he further moved an application for seeking further time but that was refused and a date was fixed for inquiry. On the date of inquiry however the respondent No.1 could not appear before the Inquiry Officer. The Inquiry Officer ignored the facts and proceeded exparte as recorded statement of the witnesses in the absence of respondent No.1. A date was also fixed for defence evidence but the respondent No.1 could not appear before the Inquiry Officer on the date fixed. Therefore the Inquiry Officer submitted his report before the Superintendent of Police, Pauri Garhwal. On the basis of findings of the Inquiry Officer, a show cause notice was issued to respondent No.1 and he was subsequently dismissed from service on 5-8-1998. The respondent No.1 preferred an appeal against the dismissal order, but the same remained undecided. Hence the respondent no. 1 filed the claim petition before the Public Service Tribunal, Uttaranchal Dehradun.

4- The public Service Tribunal, Uttaranchal Dehradun allowed the petition and directed the Superintendent of Police, Pauri Garhwal to reinstate the respondent No.1 immediately. The Tribunal also directed that the respondent No.1 will not get salary from the date of dismissal to his reinstatement on the principle of “no work no pay” vide judgment and order dated 27-7-2004.

5- Feeling aggrieved by the aforesaid judgment and order of the Tribunal, the State has preferred this writ petition before this Court.

6- Heard learned counsel for the parties and perused the record.

7- The counter affidavit has been filed by the respondent No. 1 stating therein that he, on account of his illness, which was subsequently diagnosed as Tuberculosis, could not participate in the inquiry and the department has full knowledge of the aforesaid facts even then the Inquiry Officer proceeded in the matter unilaterally and the inquiry was completed exparte against him.

8- It is not disputed that the petitioner remained absent for 69 days and this fact was in the knowledge of the Inquiry Officer as well as the Punishing Authority. The Inquiry Officer vide his report dated 20-7-1998 (annexed with Annexure No.2 to this writ petition) had recommended that the respondent No.1 remained absent with effect from 23-9-1997 to 30-11-1997 (69 days) may be sanctioned leave without pay and be dismissed under U.P. Rule 5 (1) (Ka)(ii) of U.P. Police Officers Subordinate Rank (Punishment and Appeal) Regulation, 1991. The Superintendent of Police approved this recommendation of the Inquiry Officer. Therefore, it is quite clear that the respondent No.1 had given the proper applications for leave before the authorities concerned. The approach of the Inquiry Officer appears to be wrong as on the one hand the absence of respondent No.1 was regularized and he was treated on leave without pay, but on the other hand his dismissal order was also simultaneously passed. The order of condoning the conduct of respondent No.1 as well as dismissal from service both are paradox. Therefore, the contradictory orders passed by the department can neither be said justified nor legal. The respondent No.1 was on leave without obtaining prior permission from the department, but later on his leave application was sanctioned without pay by the Appointing Authority as is evident from the record. Thus it is abundantly

clear that the Appointing Authority had condoned the conduct of respondent No. 1 by regularizing his absence.

9- On the basis of the documents available before us, we do not find any infirmity in the impugned judgment and order dated 27-7-2004 passed by the Tribunal pertaining to the reinstatement of respondent No.1 in the service.

10- As far as the judgment of the Tribunal with regard to this observation that the respondent No. 1 will not get salary from the date of dismissal order to his reinstatement in the service, we propose that the impugned judgment passed by the Tribunal should be modified up to an extent that two permanent increments of respondent No.1, with cumulative effect, should be withheld and the respondent No.1 should not get salary from the date of dismissal order to his reinstatement on the principal of “no work no pay”.

11- With the aforesaid observation, the writ petition is finally disposed of.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB